

Rule 8. Appointment of counsel.

(a) A defendant charged with a public offense has the right to self representation, and if indigent, has the right to court-appointed counsel if the defendant faces a substantial probability of deprivation of liberty.

(b) In all cases in which counsel is appointed to represent an indigent defendant who is charged with an offense for which the punishment may be death, the court shall appoint two or more attorneys to represent such defendant and shall make a finding on the record based on the requirements set forth below that appointed counsel is proficient in the trial of capital cases. In making its determination, the court shall ensure that the experience of counsel who are under consideration for appointment have met the following minimum requirements:

(b)(1) at least one of the appointed attorneys must have tried to verdict six felony cases within the past four years or twenty-five felony cases total;

(b)(2) at least one of the appointed attorneys must have appeared as counsel or co-counsel in a capital or a felony homicide case which was tried to a jury and which went to final verdict; and at least one of the appointed attorneys must have appeared as counsel or co-counsel in, and performed substantial work on, a capital case;

(b)(3) at least one of the appointed attorneys must have completed or taught within the past ~~five~~ three years an approved continuing legal education course or courses at least ~~eight~~ sixteen hours of which ~~deal, in substantial part, dealt~~ with the trial of death penalty cases and have, within the past year prior to appointment, completed at least six hours of approved continuing legal education dealing with the trial and preparation of death penalty cases; and

(b)(4) the experience of one of the appointed attorneys must total not less than five years in the active practice of law.

(c) In making its selection of attorneys for appointment in a capital case, the court should also consider at least the following factors:

(c)(1) whether one or more of the attorneys under consideration have previously appeared as counsel or co-counsel in a capital case;

(c)(2) the extent to which the attorneys under consideration have sufficient time and support and can dedicate those resources to the representation of the defendant in the capital case now pending before the court with undivided loyalty to the defendant;

(c)(3) the extent to which the attorneys under consideration have engaged in the active practice of criminal law in the past five years;

(c)(4) the diligence, competency and ability of the attorneys being considered; and

(c)(5) any other factor which may be relevant to a determination that counsel to be appointed will fairly, efficiently and effectively provide representation to the defendant.

(d) In all cases where an indigent defendant is sentenced to death, the court shall appoint one or more attorneys to represent such defendant on appeal and shall make a finding that counsel is proficient in the appeal of capital cases. To be found proficient to represent on appeal persons sentenced to death, the combined experience of the appointed attorneys must meet the following requirements:

(d)(1) at least one attorney must have served as counsel in at least ~~three~~ five felony appeals; and

(d)(2) at least one attorney must have attended and completed within the past ~~five~~ three years an approved continuing legal education course or courses at least sixteen hours of which deals, in substantial part, dealt with the trial or appeal of death penalty cases and have, within the past year prior to appointment, completed at least six hours of approved continuing legal education dealing with the trial or appeal of death penalty cases.

(e) In all cases in which counsel is appointed to represent an indigent petitioner pursuant to Utah Code Ann. Â§ 78-35a-202(2)(a), the court shall appoint one or more attorneys to represent such petitioner at post-conviction trial and on post-conviction appeal and shall make a finding that counsel is qualified to represent persons sentenced to death in post-conviction cases. To be found qualified, the combined experience of the appointed attorneys must meet the following requirements:

(e)(1) at least one of the appointed attorneys must have served as counsel in at least three felony or post-conviction appeals;

(e)(2) at least one of the appointed attorneys must have appeared as counsel or co-counsel in a post-conviction case at the evidentiary hearing, on appeal, or otherwise demonstrated proficiency in the area of post-conviction litigation;

(e)(3) at least one of the appointed attorneys must have attended and completed or taught within the past ~~five~~ three years an approved continuing legal education course or courses at least sixteen hours of which dealt, in substantial part, with the trial and appeal of death penalty cases or with the prosecution or defense of post-conviction proceedings in death penalty cases;

61 (e)(4) at least one of the appointed attorneys must have tried to judgment or verdict three civil
62 jury or felony cases within the past four years or ten cases total; and

63 (e)(5) the experience of at least one of the appointed attorneys must total not less than five years
64 in the active practice of law.

65 (f) Mere noncompliance with this rule or failure to follow the guidelines set forth in this rule
66 shall not of itself be grounds for establishing that appointed counsel ineffectively represented the
67 defendant at trial or on appeal.

68 (g) Cost and attorneys' fees for appointed counsel shall be paid as described in Chapter 32 of
69 Title 77.

70 (h) Costs and attorneys fees for post-conviction counsel shall be paid pursuant to Utah Code
71 Ann. Â§ 78-35a-202(2)(c).